No. 80-1057

APR 8 1981
ALEXANDER L. STEVAS
CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1980

THE 400 CONDOMINIUM ASSOCIATION, and AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as trustee under Trust 17460,

Petitioners,

v.

THOMAS M. TULLY, Cook County Assessor, STANLEY T. KUSPER, JR., Cook County Clerk, EDWARD J. ROSEWELL, Cook County Treasurer, and SEYMOUR ZABAN and HARRY H. SEMROW Members of the Cook County Board of Appeals,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI

TO THE

APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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Attorney for Petitioners

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1. Whatever reasons the Appellate Court may have had for refusing to award attorneys fees, they certainly were not those now suggested by the respondents

("because the underlying case was not filed pursuant to the Civil Rights Act, and no substantial federally protected right was invoked or enforced" (Br. in Opp., p.3)):

--As the respondents elsewhere concede (Br. in Opp., p.2), taxpayers "did attempt to plead and brief an alleged equal protection violation." The Complaint did at least that: "invidiously discriminatory within the class of similar condominium property, in violation...of the 'equal protection' clause of the Fourteenth Amendment, Section 1, of the Constitution of the United States" (Pet.Cert., App. D-8).

--most of the record in the trial court went to establishing the knowingly and intentionally unique tax assessment of the property.

> --in the original proceeding before the Appellate Court, much of the Brief and Argument for Plaintiffs-Appellants, was devoted to the unique assessment. One of the "Issues Presented for Review" was "whether the unique assessment...violates...the 'equal protection' clause[] of...the U.S. (Amend. XIV, Sect. 1) Constitution[]." Taxpayers expressly argued that this Court had "held in Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 363 (1973), [that] the federal Equal Protection Clause is violated where there is a treatment which is 'invidious to a particular taxpayer'."

In other words, the federal Equal Protection issue was pleaded, proved, briefed, and

argued--and was left undecided by the Appellate Court (Pet.Cert., App. C).

2. Respondents would apparently be satisfied had the Complaint recited "42 U.S.C. §1983" (Br. in Opp., p. 3). Not only is it unnecessary under federal practice to plead a statute,* it is unnecessary under Illinois law.**

3. Respondents' contention (Br. in Opp., p. 4), that their statements to the Appellate Court ("42 U.S.C. §1983...does not apply to tax cases") are mitigated by

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*Pet.Cert., p.15, n. 3, and cases cited.

**Bolton v. People, 95 Ill. App. 285, 287 (Ill.App. 1900) ("But the pleader here, as elsewhere in common law pleadings, is not bound to plead evidence or public statutes"); People ex rel. Krajci v. Kelly, 279 Ill.App. 22, 25 (Ill.App. 1935); Ohligschlager v. Proctor Community Hospital, 293 N.E.2d 86, 93, 6 Ill. App.3d 81 (Ill.App. 1972), rev'd on other grounds, 303 N.E.2d 392, 55 Ill.2d 411 (complaint may "contain sufficient facts from which it could clearly be established that the U.S. Code...[was] involved"); 30 Illinois Law & Practice (Pleading), §5, p.9.

accompanying citation to case authority, defies serious response.

4. In Rosewell v. LaSalle National Bank, ___U.S.___ (No. 79-1157, March 24, 1981), this Court subsumed, in the absence of any "question," "that under the Illinois procedure, the [Illinois] court will hear and decide any federal claim" (Slip Op., p.13). In the present case, "questions" have been raised--and the supposition is refuted. Both in the original decision concerning the Equal Protection issue (Pet.Cert., App. C)--where it made no difference in the outcome--and in the decisions now before this Court regarding §1983 and §1988 (id. at App. A, App. B)--where it did--the "state court[s] failed to even acknowledge the existence of the constitutional principle on which a litigant based his claim." Allen v. McCurry, ___U.S. ___, 49 U.S.L.W. 4015, 4018 (No. 79-935, 1980).

CONCLUSION

Federal rights "are denied as well by the refusal of the state court to decide the question, as by an erroneous decision of it." Lawrence v. State Tax Commissioner, 286 U.S. 276, 282 (1932).

The issue is now squarely presented: are State courts obligated to entertain §1983 actions?

Respectfully submitted,

Gerald Rose,

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AFFIDAVIT OF MAILING
AND OF SERVICE

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

GERALD ROSE, being first duly sworn, deposes and says that:

1. He is a member of the Bar of this Court,

2. He personally deposited the required number of copies in a U.S. mail box, in the IBM Building, Chicago, Illinois on April 7, 1981, before 5:00 P.M., first class postage prepaid, addressed to the Clerk of this Court,

3. He served three copies of the Reply on MICHAEL F. BACCASH, c/o State's Attorney of Cook County, 500 Richard J. Daley Center, Chicago, Illinois 60602, as per statute herein made and provided.

4. All parties required to be served have been served.

Gerald Rose

Subscribed and Sworn to before me this 7th day of April, 1981.

Margaret J Carturight
Notary Public

My commission expires
March 23, 1982